



INVESTIGATIVE REPORT

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OFFICE: INDIANA INSPECTOR GENERAL

TITLE: RECOMMENDATIONS FOR AGENCIES REGARDING USE OF STATE OFFICE SPACE AND REAL PROPERTY

CASE ID: 2018-03-0085

DATE: May 29, 2018

The Inspector General's Chief Legal Counsel, Tiffany Mulligan, after an investigation by Special Agents with the Inspector General, reports as follows:

The Indiana Office of Inspector General (OIG) investigates potential criminal activity and Code of Ethics violations within the executive branch of state government. Ind. Code § 4-2-7-3. The OIG is statutorily charged with recommending policies to deter, detect and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government. Ind. Code § 4-2-7-3(2). It also is charged with providing advice to agencies on developing, implementing and enforcing policies and procedures to reduce the risk of fraudulent or wrongful acts within the agency. Ind. Code § 4-2-7-3(8).

This report provides recommendations to address complaints the OIG has received regarding various state executive branch agencies that have allowed private or non-profit organizations to operate on state property or on property leased by the State. First, this Report summarizes a specific OIG investigation that looked at several allegations¹, including an

¹ The allegations the OIG investigated in this case include: an allegation that the Agency employee who allowed the non-profit organization to utilize state office space was related to an employee of the non-profit organization and an allegation that the non-profit organization was receiving grant funds to rent office space that they received for free. The OIG found that that neither allegation had merit.

allegation that a state executive branch agency (the Agency) was allowing a non-profit organization (the NPO) to utilize office space in the building the Agency was leasing at no cost to the NPO and with no written lease between the Agency and the NPO. The OIG has received similar complaints involving other state agencies; therefore, this case does not appear to be an isolated instance. Second, this Report outlines the proper process for letting outside entities utilize state property. Finally, this Report offers recommendations to agencies that might wish to provide office space to outside entities.

The goal of this Report is to provide recommendations to executive branch state agencies to help them reduce the risks associated with allowing outside entities to utilize state property and to help reduce the appearance of a misuse of state property or conflict of interests. Along with posting this Report on its website, the OIG is distributing the recommendations in this Report to all ethics officers for executive branch state agencies.

OIG Investigation

The OIG received a complaint from an employee of the Agency that the NPO was occupying office space in one of the Agency's local offices. The complaint alleged that the NPO had use of the office space and other state office equipment at no cost to the NPO. The employee became aware that the NPO was using space in one of the Agency's local offices when the NPO asked for documentation showing that the NPO was not paying rent to use the Agency's office space. The Agency's local office staff did not know what arrangements the Agency had with the NPO, and the Agency had limited documentation showing an agreement with the NPO.

The OIG conducted an investigation into this matter. The OIG's investigation found a 2005 letter and email correspondence that showed the NPO first used the Agency's office space in 2005. The 2005 letter shows that an Agency director (the Director) agreed to allow the NPO to

use a telephone, a computer, and office space in the Agency's local office. The Director decided that the Agency's local office should collaborate with the NPO because the NPO provided community based services that aligned with the Agency's mission and served the Agency's stakeholders. The Director determined that the NPO's use of the Agency's local office space and equipment facilitated this collaboration. The OIG also reviewed additional documents from 2005, including computer and internet service agreements that the NPO staff signed acknowledging that they would follow state rules regarding computer usage.

The OIG also reviewed the lease agreements between the Agency and the owner of the Agency's local office space (the Agency did not own the space; the Agency leased it). These agreements included no mention of the NPO utilizing the office space. Furthermore, besides the 2005 letter and email correspondence, the OIG found no lease or other documentation formalizing the agreement allowing the NPO to use the Agency's office space and equipment. The NPO was not listed as a vendor with the State. The OIG also reviewed emails from the Agency and the Indiana Office of Technology confirming that a NPO staff member was using an Agency phone and computer. The OIG found that the NPO staff member who used the Agency's office space locked the door to the office space when she was away from the office, and Agency staff did not have a key to access that area of the office.

During the course of the investigation, the NPO vacated the Agency's local office. As a result and because the OIG's investigation found no merit in the other allegations made in the complaint, the OIG closed the case for insufficient cause.

IDOA's Leasing Process

Under Ind. Code § 4-20.5-5-3, the Indiana Department of Administration (IDOA) is required to "assign facilities in or property owned or leased by the State." To this end, IDOA

oversees all leasing activities involving State owned or leased property. IDOA also provides state agencies with resources² and assistance on all real estate matters.

The OIG met with IDOA staff to discuss what steps an agency should take if it wants to allow an outside entity to utilize state owned or leased property. IDOA staff said an agency should first contact IDOA's Leasing Office to discuss its options. An agency will then need to work with IDOA to draft an agreement to allow the outside entity use of the property. The type of agreement will vary based on the circumstances involved. For example, IDOA has used Memorandums of Understanding (MOUs) to allow one state agency to utilize the property of another state agency and lease agreements to allow a non-profit organization to utilize the property of a state agency. During the OIG's meeting with IDOA, IDOA staff stressed that regardless of what type of agreement is used, an agency should coordinate with IDOA to ensure a proper agreement is in place to protect the State from liability and to ensure that the agency follows state procurement laws.

Recommendations

Based upon the investigation described in this Report and other OIG activities, the OIG makes the following recommendations to state executive branch agencies regarding the use of state office space or other real property by outside entities. The goal of these recommendations is to help agencies understand the risks in allowing outside entities to utilize state office space and to make recommendations on how to reduce these risks.

Recommendation 1

A state executive branch agency should not allow any other entity to occupy property that the State owns or leases without prior written approval of IDOA and some sort of written

²These resources include boilerplate documents and a Real Estate Leasing Manual. Many of these resources can be found at: <http://in.gov/idoa/2528.htm>.

agreement in place. This restriction applies to private companies, non-profit organizations, local and federal government entities, and other state agencies. If a state executive branch agency is considering such an arrangement, the agency should contact IDOA's Deputy Commissioner of State Resources. As noted above, IDOA can assist agencies to ensure the arrangement is in the best interest of the State and the proper agreement is in place for the specific circumstances involved.

Recommendation 2

A state executive branch agency, in cooperation with IDOA, should ensure that any written agreement for use of office space or other real property includes appropriate provisions to protect the State from liability. As noted above, the type of agreement and the language included in the agreement will vary based on the factual circumstances involved; however, the agreement should at a minimum include liability and insurance provisions. IDOA and the Indiana Attorney General's Office can provide specific advice to the agency on what provisions the agency should include.

Recommendation 3

The agency, in consultation with IDOA, also should carefully consider what compensation is appropriate, if any, for the use of state property. This consideration may include several variables, including the type of property, whether it is state owned or state leased, how the entity or organization intends to use the property, and whether allowing the entity or organization to use the property serves the agency's mission and is in the State's best interest. If the agency recommends a no cost or reduced cost arrangement, the agency should provide a sufficient justification and any relevant documentation to IDOA for its review and consideration.

Recommendation 4

A state executive branch agency should follow basic procurement guidelines or other approved process before considering whether to allow an outside entity to utilize state property. An agency may have a justifiable reason for wanting to allow a specific organization to utilize state-owned or state-leased property. For example, the agency may feel that the outside organization's mission aligns with the agency's mission, and the agency will be better able to serve the public by partnering with the organization. By including IDOA early in the conversation on whether and how to allow outside use of state owned or leased property, the agency and IDOA will be able to make an informed decision, consider relevant factors involved, and prepare appropriate documentation should IDOA approve the arrangement.

The agency should keep in mind that the ability to use state property, especially at no rent or a reduced rent, is a significant benefit to an entity or organization and that other entities or organizations, some with similar missions, may exist that may want an opportunity for the same benefits. As a result, if IDOA and the agency decide that allowing an outside entity to use state property is within the best interests of the State, the agency should consider providing all similarly situated organizations the same opportunity to receive these benefits. The agency can do this by following procurement guidelines through IDOA that require some type of competitive process or a well-documented and thorough justification for choosing a specific organization to receive these benefits.

Dated: May 29, 2018

APPROVED BY:



Lori Torres, Inspector General